

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miguel Camnitzer	Team: Team # 6	CCRB Case #: 200302547	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/02/2003 10:30 PM	Location of Incident: Corner of West 100th Street & Broadway	Precinct: 24	18 Mo. SOL 10/2/2004	EO SOL 10/2/2004	
Date/Time CV Reported Wed, 04/02/2003 10:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/08/2003 1:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sungduk Kim	30443	919243	PBMN TF
2. LT Kieran Creighton	00000	901383	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Sungduk Kim	Abuse: Police Officer Sungduk Kim stopped the car in which § 87(2)(b) was an occupant.	
B.LT Kieran Creighton	Abuse: Lieutenant Kieran Creighton stopped the car in which § 87(2)(b) was an occupant.	
C.POM Sungduk Kim	Abuse: Police Officer Sungduk Kim threatened to issue summons to § 87(2)(b)	
D.LT Kieran Creighton	Force: Lieutenant Kieran Creighton used physical force against § 87(2)(b)	

Synopsis

At approximately 10:30pm on April 2, 2003, § 87(2)(b) was driving with his friend, § 87(2)(b) on Amsterdam Avenue in upper Manhattan when he was pulled over by PO Sungduk Kim and Lt. Kieran Creighton for driving without headlights. PO Kim administered a breathalyzer test, which § 87(2)(b) passed. The officers then returned § 87(2)(b)'s documents and drove away without issuing a summons. § 87(2)(b) upset at the way the officers treated him, followed the officers to a red light. Through the window of his car, he asked PO Kim what precinct the officers were from. PO Kim responded by telling § 87(2)(b) to pull over so that he could issue him a summons. § 87(2)(b) complied, and as he pulled over, called 911 on his cell phone. Lt. Creighton instructed him to exit his vehicle, and repeatedly commanded him to hang up his call. When § 87(2)(b) did not comply, Lt. Creighton grabbed § 87(2)(b) by the hand that held the cell phone, resulting in the call being disconnected. The officers instructed § 87(2)(b) to leave, again without issuing a summons. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) § 87(2)(b) a § 87(2)(b), is a § 87(2)(b) Hispanic male, 5 feet 11 inches tall, weighing 200 lbs. At approximately 10:30pm on April 2, 2003, § 87(2)(b) called 911 to report an encounter that he was currently having with 2 police officers who had just pulled him over in his car (enc. 8A-B). The operator transferred the call to IAB, and § 87(2)(b) explained the incident in detail (enc. 6A-C). His complaint was subsequently referred to CCRB on April 8, 2003. § 87(2)(b) was interviewed at the CCRB on May 1, 2003 (Enc. 10A-F), and later answered follow-up questions via phone on August 18, 2003 and December 3, 2003. § 87(2)(g)

§ 87(2)(b)

On April 2, 2003, at approximately 10:30pm, § 87(2)(b) was driving a 2002 silver Jeep Liberty (NY license plate no. § 87(2)(b)) with his friend, § 87(2)(b) in the passenger seat. They had come from dinner and were going to pick up a third friend, § 87(2)(b), at a bar somewhere around West 109th Street.

§ 87(2)(b) came to a red light on Amsterdam Avenue and noticed a marked police vehicle next to his car. As the red light changed § 87(2)(b) continued north on Amsterdam Avenue. The officers followed behind for a few blocks and then turned on their lights and sirens. § 87(2)(b) pulled over and turned off the car. 2 officers (later identified as PO Sungduk Kim and Lt. Kieran Creighton) exited their vehicle and approached § 87(2)(b)'s car. PO Kim requested § 87(2)(b)'s license and registration and explained that he had been pulled over because his headlights were off. § 87(2)(b) apologized, as he had thought the headlights were on, when in fact he only had on his fog lights. PO Kim repeatedly asked § 87(2)(b) if he was drunk, and § 87(2)(b) replied that he had not been drinking. PO Kim informed § 87(2)(b) that he wished to administer a breathalyzer test. § 87(2)(b) exited and walked around to the back of the car where he was given the test. When it was completed, PO Kim threw the cartridge on the ground and instructed § 87(2)(b) to return to his vehicle. Throughout this portion of the incident, § 87(2)(b) remained inside the car.

As § 87(2)(b) got back into the driver seat, PO Kim and PO Creighton returned to their vehicle. After a few minutes PO Kim pulled up alongside the driver side of § 87(2)(b)'s car. Without saying a word, PO Creighton stuck his arm out of the window and handed § 87(2)(b)'s license and registration back to him. The police vehicle did not come to a complete stop at this point. Once § 87(2)(b) received the documents, the officers drove away.

§ 87(2)(b) followed the officers as they turned left off of Amsterdam onto a side street, and then made another left onto Broadway. At a red light § 87(2)(b) pulled next to the driver side of the police vehicle and honked his horn to get PO Kim's attention. When PO Kim opened his window, § 87(2)(b) asked him what precinct the officers were from (as he could not see a precinct number on the side of the vehicle - only the letters "MTF"). PO Kim replied, "We're not from any precinct." § 87(2)(b) responded that the officers must be from somewhere. PO Kim then said, "Oh you really want to know that?" PO Kim then explained that he was going to give § 87(2)(b) a ticket, and instructed him to pull over.

§ 87(2)(b) immediately pulled over to the right side of the road again, around West 100th Street. He then contacted 911 on his cell phone and explained the situation to the operator. PO Kim pulled up behind § 87(2)(b)'s car and both officers exited their vehicle. PO Kim approached the driver side and asked § 87(2)(b) for his license and registration again, which § 87(2)(b) provided. PO Kim then walked behind the car where he spoke with Lt. Creighton. § 87(2)(b) could not hear what was said. Lt. Creighton then motioned with his hand for § 87(2)(b) to exit his vehicle and come to the back of the vehicle. To avoid any misunderstandings, § 87(2)(b) opened the driver side door and asked, "Are you directing me to get out of the truck?" § 87(2)(b) was still connected to 911. Lt. Creighton said, "Yes." § 87(2)(b) got out and walked to the back of his car.

Upon exiting the car, § 87(2)(b) immediately showed Lt. Creighton that he was on the phone with 911. Lt. Creighton repeatedly directed § 87(2)(b) to hang up the phone. At the same time, the 911 operator had transferred § 87(2)(b) to the IAB command center and the IAB officer was directing § 87(2)(b) not to disconnect the call. § 87(2)(b) explained to Lt. Creighton that the 911 operator was telling him not to release the call, and he explained to the operator that Lt. Creighton was instructing him to hang up. The situation went back and forth like this. § 87(2)(b) then put the cell phone down by his side, while keeping the call connected. Lt. Creighton then grabbed § 87(2)(b)'s left hand and again instructed him to hang up. § 87(2)(b) told Lt. Creighton again that the 911 operator was telling him not to release the call. Lt. Creighton began applying a great deal of pressure to § 87(2)(b)'s left hand, causing § 87(2)(b) to disconnect the call. Lt. Creighton was "crushing" § 87(2)(b)'s hand for 1 to 2 minutes. As all of this was happening, § 87(2)(b) remained in § 87(2)(b)'s car and contacted 911 on his cell phone.

Lt. Creighton proceeded to ask § 87(2)(b) questions about whom the car belonged to and where it was registered. Lt. Creighton again explained that § 87(2)(b) was originally pulled over for only having his fog lights on, and added that they suspected § 87(2)(b) of drunk driving because there were many restaurants and bars in the area. § 87(2)(b) responded that he understood all of this, but pointed out that the officers should have explained it all earlier. Lt. Creighton then said, "Just get in your car and get out of here."

§ 87(2)(b) returned to his car. He and § 87(2)(b) planned to stay at the location until IAB responded to the scene. § 87(2)(b) informed Lt. Creighton of this, and he responded, § 87(2)(b) if I were you I'd get out of here. You really should go § 87(2)(b). It would be in your best interest, § 87(2)(b).

§ 87(2)(b) decided to drive away and come around the block to wait for the additional officers. He parked on the same corner, but on a side street so that PO Kim and Lt. Creighton could not see them. Eventually 2 to 3 police vehicles approached, and § 87(2)(b) began flashing his lights and honking to get their attention. § 87(2)(b) and § 87(2)(b) were then interviewed by Internal Affairs and additional uniformed officers who had responded to the 911 call. Once they were finished, § 87(2)(b) drove directly home to New Jersey.

In a subsequent phone conversation with the CCRB on August 18, 2003, § 87(2)(b) confirmed that after the officers stopped him the first time, they did not pull away in pursuit of another car and did not turn their lights or sirens back on. At no point did he observe the officers dealing with another vehicle.

In a phone conversation dated December 3, 2003, § 87(2)(b) clarified that he turned on his headlights during the initial stop at the time he was explaining to the officers that his fog lights were on. His

headlights remained on after that, and were definitely on when he addressed the officers at the red light afterwards.

While § 87(2)(b)'s hand was "crushed" by Lt. Creighton, he did not sustain any lasting injuries or receive any medical treatment. No summonses or criminal charges resulted from this incident, and § 87(2)(b) did not file a notice of claim.

Results of Investigation

§ 87(2)(b) 911 call (enc. 11B):

At 10:37pm on April 2, 2003, § 87(2)(b) calls 911 from his cell phone and requests that a police car be sent to the corner of West 100 Street and Broadway. He explains that two officers are "really being really mean right now" and that his friend is on the phone with 911, but one of the officers is repeatedly instructing him to hang up.

Witness Account - § 87(2)(b) (enc. 12A-E):

§ 87(2)(b) a telephone systems operator, is a § 87(2)(b) Black male, 6 feet tall, weighing 250 lbs., with brown hair and brown eyes. § 87(2)(b) was interviewed at the CCRB on May 1, 2003, and gave the following statement.

§ 87(2)(g) § 87(2)(b) reported that on April 2, 2003, at approximately 10:30pm, they had just finished dinner and were going to pick up a friend of § 87(2)(b)'s who was up by Columbia University. At one point a marked police vehicle pulled them over.

Two officers (later identified as PO Kim and Lt. Creighton) approached the car. PO Kim explained that § 87(2)(b) was pulled over for not having his headlights on. He asked § 87(2)(b) repeatedly if he had been drinking, which § 87(2)(b) denied. § 87(2)(b) provided his license and registration. PO Kim asked § 87(2)(b) to step out of the vehicle, at which point he administered a breathalyzer test. When the test was completed PO Kim discarded the cartridge on the ground. He questioned § 87(2)(b) about the vehicle he was driving, and then PO Kim and Lt. Creighton returned to their vehicle. Soon after, PO Kim pulled up next to § 87(2)(b)'s vehicle and returned his paperwork through the window of the police vehicle.

At this point § 87(2)(b) and § 87(2)(b) noticed that there was no precinct number on the side of the police vehicle. § 87(2)(b) began driving, and pulled up next to the police vehicle, which was stopped at a red light. § 87(2)(b) spoke to PO Kim through the window, and asked what precinct the officers were from. PO Kim asked why he wanted to know, and § 87(2)(b) explained that it was not indicated on the side of the police vehicle. PO Kim replied, "You know what? Pull over. I'm going to give you a summons and that will tell you what precinct I'm from."

§ 87(2)(b) complied with PO Kim's command and pulled over. At this point he called 911 on his cell phone. PO Kim directed § 87(2)(b) to exit his vehicle. § 87(2)(b) remained in the car.

§ 87(2)(b) explained why he felt the actions of the officers were discourteous, including the way in which PO Kim threw the breathalyzer cartridge on the floor, and the way the officers returned his paperwork to him. Lt. Creighton exited his vehicle at this point and instructed § 87(2)(b) to get off the phone. § 87(2)(b) explained that he was contacting 911, and that the 911 operator was instructing him not to hang up. § 87(2)(b) then informed Lt. Creighton that the operator wanted to speak to the officer. Lt. Creighton responded, "No, I am not getting on the phone. I am telling you to hang up the phone." This argument went back and forth for a few minutes. Eventually § 87(2)(b) took the phone from his ear, and without disconnecting the call, brought his arm down by his side. Lt. Creighton said, "No. I want you

to disconnect it.” Lt. Creighton stated his name and then again commanded § 87(2)(b) to hang up. § 87(2)(b) informed the 911 operator of what Lt. Creighton was saying.

At this point Lt. Creighton grabbed § 87(2)(b)'s left hand, which was holding the cell phone. Lt. Creighton held on to § 87(2)(b)'s hand for 30-40 seconds. § 87(2)(b) told the 911 operator that the Lieutenant was crushing his hand in order to get him to disconnect the call. § 87(2)(b) witnessed all of this through the mirror in the car. He then called 911 on his own cell phone.

After § 87(2)(b)'s call was disconnected, Lt. Creighton informed him that he would not be issued a summons, and that he should just get in his car and drive away. § 87(2)(b) got back into his car, at which point § 87(2)(b) informed him that they should remain at the scene for additional police officers to appear. Lt. Creighton continued to instruct § 87(2)(b) to leave the scene. § 87(2)(b) then drove around the block and waited for the other officers. § 87(2)(b) complained that his hand was in pain, and § 87(2)(b) observed that it was red and bruised. When the additional officers arrived, they took § 87(2)(b)'s complaint.

Subject Officer Account – PO Kim (enc.14A-C):

Police Officer Sungduk Kim (Tax No. 919243/Shield No. 30443) of the Manhattan North Task Force, is a § 87(2)(b)-old Asian male, 5 feet 9 inches tall, weighing 185 lbs., with black hair and brown eyes. He was interviewed at the CCRB on July 25, 2003.

PO Kim's memo book for April 2, 2003 (enc. 13A-C), states that at 10:30pm he stopped § 87(2)(b) for driving without headlights, and warned and admonished him. At 10:35pm the same vehicle followed the officers to 100th Street and Broadway – “Situation handled by Lt. Creighton.” PO Kim's entries make no mention of a second vehicle stop.

On April 2, 2003, PO Kim was the operator of marked police vehicle #2619, with Lt. Creighton. At approximately 10:30pm, PO Kim stopped § 87(2)(b) for driving with his headlights off. He and Lt. Creighton approached the vehicle. PO Kim asked for § 87(2)(b)'s paperwork and explained why he had been stopped. § 87(2)(b)'s speech was slurred, and PO Kim asked if he had been drinking. § 87(2)(b) responded that he had one glass of wine. PO Kim then instructed § 87(2)(b) to exit the vehicle, at which point he administered a breathalyzer test. The test came back negative, indicating that § 87(2)(b) was not impaired. PO Kim informed § 87(2)(b) of the test results and instructed him to wait inside his vehicle. § 87(2)(b) complied.

PO Kim and Lt. Creighton returned to their vehicle with § 87(2)(b)'s paperwork. PO Kim intended on issuing § 87(2)(b) a summons for driving without his headlights, but as he was running a check on § 87(2)(b)'s license, a vehicle sped by them at a high rate of speed. Lt. Creighton ordered PO Kim to return § 87(2)(b)'s paperwork and simply warn and admonish him. PO Kim returned the documents quickly and drove off after the speeding vehicle. PO Kim did not recall exactly how he returned the paperwork to § 87(2)(b). When asked, PO Kim stated that he did not recall if he actually got out of his vehicle to return the paperwork or if he pulled up along side § 87(2)(b) and had Lt. Creighton hand back the paperwork through the window. PO Kim also could not recall if he said anything to § 87(2)(b) before they left the location in pursuit of the speeding vehicle.

PO Kim turned on his lights and sirens and pulled over the speeding vehicle approximately one or two blocks south. PO Kim could not provide any details on the make, model, or description of the second car. He and Lt. Creighton approached the car, but as PO Kim began to speak to the driver of the speeding vehicle, § 87(2)(b) pulled up and parked in front of the vehicle that the officers had stopped. § 87(2)(b) immediately exited his vehicle and began walking up to PO Kim. § 87(2)(b) yelled that he wanted the officers' names and shield numbers, and wanted to know why PO Kim had stopped him. PO Kim instructed § 87(2)(b) to get back inside his car and wait there, because the officers were dealing with someone else at that time. § 87(2)(b) refused to comply and repeated his request for PO Kim's name and shield number. At this point, Lt. Creighton was still standing on the passenger side of the second vehicle and was not speaking to § 87(2)(b).

Due to the way § 87(2)(b) was behaving, PO Kim warned and admonished the driver of the speeding vehicle (who in turn left the location). § 87(2)(b) was on his cell phone at this point, and was repeatedly asking why the officers had stopped him. PO Kim answered at least 6 times. He explained that he could have issued § 87(2)(b) a summons for driving without his headlights but chose not to do so. PO Kim denied saying, “Okay, now you’re going to get a summons,” in response to § 87(2)(b)’s request for the officers’ names and badge numbers, or ever stating that his information would be on a summons. PO Kim did not know whom § 87(2)(b) was speaking with on the phone, and denied that § 87(2)(b) ever stated that he was on the phone with 911. Both he and Lt. Creighton instructed § 87(2)(b) to hang up the phone, since they could not discuss the stop with him while he was speaking with someone else. PO Kim did not recall if or when § 87(2)(b) hung up the phone, nor could he recall what § 87(2)(b) was saying to the person on the phone. When asked if Lt. Creighton grabbed § 87(2)(b)’s hand to hang up the call, he replied, “No, I don’t remember that part.” Later PO Kim denied that he or Lt. Creighton had any physical contact with § 87(2)(b).

At some § 87(2)(b) asked what precinct PO Kim belonged to, and PO Kim responded that he was from Manhattan North Task Force. At another point PO Kim did verbally provide his name and shield number to § 87(2)(b). The officers eventually instructed § 87(2)(b) to return to his vehicle and leave the location. § 87(2)(b) reluctantly complied. PO Kim recalled that § 87(2)(b) was still on his cell phone at the time. Then PO Kim and Lt. Creighton left the location as well. PO Kim denied ever asking for or having § 87(2)(b)’s paperwork during this second interaction.

Subject Officer Account – Lt. Creighton (16A-C):

Lt. Kieran Creighton (Tax No. 901383) of the Manhattan North Task Force, is a § 87(2)(b)-old White male, 6 feet tall, weighing 190 lbs., with blonde hair and blue eyes. He was interviewed at the CCRB on August 12, 2003.

Lt. Creighton’s memo book (enc. 15A-C) states that at 10:25pm § 87(2)(b) was pulled over for driving without headlights. He was warned and admonished. At 10:32pm the same vehicle “pulls up along side us” at 100th Street and Broadway and § 87(2)(b) asked why he was pulled over. Lt. Creighton explained the reason for the stop. Lt. Creighton’s entries make no mention of a second vehicle stop.

On April 2, 2003, Lt. Creighton was assigned to marked police vehicle #2609, with PO Kim as his operator. At approximately 10:25pm, Lt. Creighton and PO Kim stopped § 87(2)(b) for driving without his headlights on. PO Kim approached § 87(2)(b) and conversed with him. Lt. Creighton could not hear what was said since he was on the passenger side of the vehicle. PO Kim administered a breathalyzer test, which determined that § 87(2)(b) was not intoxicated. When Lt. Creighton was asked if a summons was going to be issued at that point, he responded, “I don’t think so. There wasn’t one issued and it didn’t come up in the discussion.” PO Kim warned and admonished § 87(2)(b) regarding his headlights and directed him to sit back in his vehicle. Lt. Creighton and PO Kim returned to their vehicle. Lt. Creighton stated that he did not run § 87(2)(b)’s license or plate number, and he did not know if PO Kim did so.

At this point a second vehicle drove by the officers’ vehicle at a “high rate of speed.” The officers decided to pursue this vehicle. When Lt. Creighton was asked if he ordered PO Kim not to issue a summons to § 87(2)(b) so that they could pursue the speeding vehicle, Lt. Creighton responded, “I don’t order police officers to write summonses or not write them. That would be up to him.” PO Kim drove up to § 87(2)(b)’s car and one of the officers passed back § 87(2)(b)’s documents through the window. Lt. Creighton did not speak to § 87(2)(b) at this point, and could not recall if PO Kim spoke to him.

The officers then drove away in pursuit of the speeding vehicle. Lt. Creighton could not recall for certain whether they utilized their lights and siren in order to pull over the second vehicle, but he assumed that they did, as this is standard procedure. They pulled over the car at 100th Street and Broadway. PO Kim approached the driver and Lt. Creighton approached the passenger side. Lt. Creighton could not recall any details regarding the make, model, or color of the vehicle.

Seconds later § 87(2)(b) pulled up in his vehicle and parked in front of the second stopped car. He got out and approached Lt. Creighton with his cell phone to his ear. Lt. Creighton explained that he stopped paying attention to the second stopped vehicle, as his focus was directed at the “aggressive” and “irate” man walking toward him. § 87(2)(b) asked for a further explanation of why he was stopped at the previous location. Lt. Creighton did not recall if § 87(2)(b) also requested the officers’ names and their precinct. Neither did Lt. Creighton recall if § 87(2)(b) informed him that he was on the phone with 911 or that the operator was telling him not hang up.

Lt. Creighton stated that he was focused on whether the object in § 87(2)(b)’s hand was a cell phone or a weapon. He explained that according to his training, as well as an Operation Order dated 3/12/03, (enc. 17A-B) he was aware that stunguns can be disguised as cell phones and purchased over the Internet. Lt. Creighton directed § 87(2)(b) to put down the phone. § 87(2)(b) did not comply, and Lt. Creighton repeated the command several times. § 87(2)(b) did not respond at all to these commands, and he was “twisting and turning” his upper body. Because of this movement, Lt. Creighton could not take a good look at the cell phone. Lt. Creighton grabbed § 87(2)(b) by the hand that held the cell phone in order to stop him from moving, get his attention, and determine whether the cell phone was actually a weapon. When Lt. Creighton was asked if he was squeezing § 87(2)(b)’s hand while he grabbed onto the phone, he responded, “My main concern was the cell phone. He’s moving his arm around and I held on to the cell phone.” Later, when asked if he squeezed § 87(2)(b)’s hand for 1 to 2 minutes, Lt. Creighton said, “No.” Lt. Creighton did not take the cell phone from § 87(2)(b).

Once Lt. Creighton had § 87(2)(b)’s attention, he explained the reason for why the officers had initially stopped § 87(2)(b). Lt. Creighton and PO Kim then returned to their vehicle and left the location.

Lt. Creighton could not recall if PO Kim took § 87(2)(b)’s paperwork again during the second interaction. Lt. Creighton stated that he did not know if PO Kim ever said that his name would “be on the summons.” Lt. Creighton did not recall any specific discussion regarding the possibility of a summons, and stated that the only discussion he had with § 87(2)(b) revolved around the prior stop and the way officers “do things.”

When Lt. Creighton was asked if PO Kim directed § 87(2)(b) to pull over a second time in order to give him a summons, he responded, “I don’t know.” Later, when asked again whether the officers had pulled over § 87(2)(b) Lt. Creighton responded, “No. He pulled us over.”

Operations Order (enc. 17A-B):

During his statement, Lt. Creighton provided a copy of Operations Order 11-3,c.s., dated March 12, 2003, on the subject of “Officer safety alert regarding cell phone stungun.” The order instructs officers that individuals can purchase stunguns disguised as cell phones over the Internet for less than \$60.00. The weapons can “deliver 180,000 volts through an electrode that resembles an antenna.” Officers are instructed to “remain mindful to use extreme caution when exercising searches of subject’s person or property.”

§ 87(2)(b)’s 911 call (18A-B):

At 10:36pm on April 2, 2003, § 87(2)(b) contacts 911 [Sprint Job § 87(2)(b) (enc.19A-B)] and reports that he is being harassed by an officer who refuses to give his information. In the background an unidentified male can be heard saying, “All the information is going to be on the summons.” § 87(2)(b) explains to the 911 operator, “The officer right now is writing me a summons because I asked him what precinct he is with.” § 87(2)(b) provides his name and cell phone number to the operator. In the background an unidentified male is heard saying, “We let you go and you’re gonna--.” § 87(2)(b) responds, “Because I came after you.”

The operator puts § 87(2)(b) on hold to speak to her supervisor. A moment later she gets back on and informs § 87(2)(b) that she will transfer him to IAB. § 87(2)(b) informs her that the officer is

instructing him to hang up the phone. The operator tells him not to hang up and then puts him on hold again.

A moment later the operator connects the call to IAB. Lt. Creighton is heard saying, "My name is Lt. Creighton and I'm with the Manhattan North Task Force. You were pulled over for not having your headlights on." § 87(2)(b) asks, "So why did you keep insisting on giving me a breathalyzer?" Lt. Creighton responds, "One more time. Put down the cell phone."

§ 87(2)(b) asks the IAB officer on the phone if he hears "Officer Creighton" yelling at him to hang up. Lt. Creighton corrects § 87(2)(b) saying "Lieutenant."

At this point the IAB officer, the 911 operator, § 87(2)(b) and a subject officer are all speaking at once, making it difficult to determine what is being said. However, as the IAB officer attempts to get the operator's information, § 87(2)(b) is clearly heard saying to an officer, "I'm contacting your supervisor because I'm being pulled over."

A moment later, someone is heard saying "Please" in a raised voice. This is followed by the tone of a cell phone key being pressed and held down for approximately 11 seconds. After this the IAB officer attempts to speak to § 87(2)(b) but the call has been disconnected.

§ 87(2)(b) calls 911 again and explains that he was disconnected from a prior call. § 87(2)(b) stated that he had an officer harassing him as he was calling 911 to explain the situation, and the officer was crushing his hand until he would release the cell phone. The officer will not leave the scene even though § 87(2)(b) has been instructed to remain there until another police car arrives. A moment later § 87(2)(b) reports that the officers just drove away and two other cars just pulled up. The 911 operator tells § 87(2)(b) that she is connecting him to IAB. § 87(2)(b) puts § 87(2)(b) on the phone so he can drive up to the additional officers that arrived on the scene. § 87(2)(b) describes the incident to the operator and adds that the police vehicle number was 2609 and the officers' names were PO Kim and Creighton.

An officer from Sector 24G then gets on § 87(2)(b)'s cell phone and speaks to the 911 operator. This officer advises the operator to connect § 87(2)(b) to IAB. The operator contacts IAB and provides information regarding the incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

History of Officers' Substantiated Cases Resulting in Command Discipline (enc. 3,4):

PO Kim and Lt. Creighton have no prior substantiated complaints against them.

Conclusions and Recommendations

Officer Identification:

§ 87(2)(b) identified the 2 subject officers on the scene as PO Kim and Lt. Creighton, by observing PO Kim's badge, and hearing Lt. Creighton state his name. Their identities were later confirmed by roll call documents (enc. 20A-C), the 911 recordings, the officers' memo books, and their own accounts of the incident.

Established Facts:

All parties agree that at approximately 10:30pm on April 2, 2003, PO Kim and Lt. Creighton pulled over § 87(2)(b) for driving with his headlights off. During the stop § 87(2)(b) was given a breathalyzer test, which he passed. It is undisputed that after this initial stop, § 87(2)(b) had a second exchange with the officers at another location in the vicinity. During this second exchange § 87(2)(b) held a cell phone in his hand and refused to hang up when directed to do so by the officers. Finally it is undisputed that at a certain point Lt. Creighton grabbed § 87(2)(b) by the hand that held the cell phone.

Issues in Dispute:

§ 87(2)(g)
[REDACTED]

Credibility and Evidence Assessment:

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(g) PO Kim explained during his statement that he did not issue a summons to § 87(2)(b) regarding the headlights, because Lt. Creighton instructed him not to do so. Lt. Creighton § 87(2)(g) stated that a summons "didn't come up in the discussion" and that he does not order officers to write summonses or not to write them.

Lt. Creighton admitted that he grabbed onto § 87(2)(b)'s hand at one point, while he was holding his cell phone. However, PO Kim denied that he or Lt. Creighton had any physical contact with § 87(2)(b) during the incident.

§ 87(2)(g) In his statement he provided an account of how § 87(2)(b) parked his car and approached the officers as they were engaged in a second car stop. However, at the end of his statement Lt. Creighton was asked if the officers pulled § 87(2)(b) over a second time in order to issue him a summons. His response was, "I don't know." Then Lt. Creighton was asked again whether the officers had pulled over § 87(2)(b) a second time, and he responded, "No. He pulled us over." § 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(g) In addition, Lt. Creighton's memo book stated that
§ 87(2)(b) "pulls up along side us." § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
Both PO Kim and Lt. Creighton deny having any knowledge that § 87(2)(b) was speaking with 911. However on the 911 tape, § 87(2)(b) is clearly heard asking the IAB officer on the phone if he can hear "Officer Creighton telling me to put down my cell phone." A moment later Lt. Creighton says, "Lieutenant." § 87(2)(b), § 87(2)(g)

A few moments later § 87(2)(b) is clearly heard saying, "I'm contacting your supervisor because I'm being pulled over." § 87(2)(g)

Lt. Creighton justified his decision to grab onto § 87(2)(b)'s hand as a way to stop § 87(2)(b) from moving, to get § 87(2)(b)'s attention, and to determine that the cell phone was not actually a weapon in disguise. Lt. Creighton explained that he had reason to believe the cell phone could be a stungun, due to a recent Operations Order. This order reports that such a weapon can deliver 180,000 volts through an electrode that resembles an antenna, and that "officers should remain mindful to use extreme caution when exercising searches of subject's person or property." Lt. Creighton claimed to have had this report in mind when he dealt with § 87(2)(b) § 87(2)(g)

Lt. Creighton did not seize the phone after grabbing it. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Both officers at various points denied or did not recall plans to give § 87(2)(b) a summons during the second interaction. PO Kim denied saying at any point that, "the information will be on the summons." Lt. Creighton did not recall PO Kim making such a statement. However, on the 911 recording, someone is clearly heard saying, "All the information is going to be on the summons." § 87(2)(g)

Allegation A (Abuse of Authority): Police Officer Sungduk Kim stopped the car in which § 87(2)(b) was an occupant.

Allegation B (Abuse of Authority): Lieutenant Kieran Creighton stopped the car in which § 87(2)(b) was an occupant.

Allegation C (Abuse of Authority): Police Officer Sungduk Kim threatened to issue a summons to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

New York Search and Seizure cites *People v. Spencer* (Kamins 321), in which the stop of Spencer’s vehicle was deemed unreasonable for a variety of factors, including that “the police were investigating *past* criminal activity...rather than ongoing criminal activity” and “the police stopped a person not suspected of criminal activity” (enc. 1C). § 87(2)(b), § 87(2)(g)

New York Search and Seizure also cites *People v. Banks* (Kamins 319-320), which deals with the “permissible scope of conduct by the police pursuant to a stop for a violation of the Vehicle and Traffic Law.” “Once the officer issues a summons and determines that the driver’s license, registration, and insurance are in order, the initial justification for seizing and detaining the suspect is exhausted. If the officer continues to detain the driver...the detention will be an improper seizure...” (enc. 1A-B). § 87(2)(g), § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

In *Police Department v. Napoleoni* (OATH Index Nos. 1815-1600 – 1/9/01), Judge Faye Lewis stated: “Bad faith has been found where police action has been held to be in retaliation for a citizen’s attempt to copy an officer’s badge number” (enc. 2N) as in *Police Department v. Tracey*, which Judge Lewis cited. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D (Force): Lieutenant Kieran Creighton used physical force against § 87(2)(b)

Lt. Creighton, by his own admission, grabbed § 87(2)(b) s hand for a period of time. § 87(2)(g), § 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: